

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TZUMI INNOVATIONS, LLC,

Plaintiff,

v.

ANDREW R. WHEELER, in his Official
Capacity as Administrator of the United States
Environmental Protection Agency, and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

21 Civ. 0122 (LGS)

ORDER

WHEREAS, the Court ordered the parties to file a jointly proposed order setting forth the agreed-upon terms pending resolution of Plaintiff's motion for a preliminary injunction and Defendants' motion to dismiss;

WHEREAS, the parties have since conferred and reached agreement regarding these issues;

WHEREAS, the Court denied Plaintiff's motion for a temporary restraining order based on the representation by Defendants Andrew R. Wheeler, in his official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), and the EPA (together, the "Government") that although the Government is investigating potential violations of environmental law related to Plaintiff Tzumi Innovations, LLC ("Tzumi") for its Wipe Out! product, it will be at least 40 days before the Government issues a SSURO to Tzumi for Wipe Out!;

WHEREAS, although it is the Government's position that it has no obligation to do so, in this case the Government has agreed that it will provide the Court and Tzumi with one week's


notice before it issues a SSURO regarding Wipe Out! to Tzumi, an agreement that will expire upon the Court's ruling on Tzumi's preliminary injunction motion; and

WHEREAS, although it is the Government's position that it has no obligation to do so, the Government has also agreed that it will provide the Court and Tzumi with one week's notice—without identifying the retailer—before it issues a SSURO under 7 U.S.C. § 136k(a), seizure under 7 U.S.C. § 136k(b), suspension of sale under 7 U.S.C. § 136d(c), civil penalty under 7 U.S.C. § 136l(a), or recall request regarding Wipe Out! to any of the retailers that Tzumi has identified to the Government by January 15, 2021 under a Confidential Business Information (“CBI”) designation, which designation the Government will apply to said list of retailers with the further understanding that the Government will be allowed to distribute said list within the EPA to employees who need the information to comply with this agreement, an agreement that will expire upon the Court's ruling on Tzumi's preliminary injunction motion (the CBI designation shall survive the expiration of the agreement); it is hereby

ORDERED, by agreement of the parties, that the following briefing schedule shall apply with respect to Tzumi's motion for a preliminary injunction and the Government's motion to dismiss:

1. The Government's opposition to Tzumi's motion and the Government's motion to dismiss shall be filed by: January 27, 2021;
2. Tzumi's reply in support of its motion for a preliminary injunction and response to the Government's motion to dismiss shall be filed by: February 10, 2021; and
3. The Government's reply in support of its motion to dismiss shall be filed by February 17, 2021.

Dated: January 15, 2021
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE